

Internal Revenue Service

Number: **200823004**

Release Date: 6/6/2008

Index Number: 355.01-00, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B05

PLR-119727-07

Date:

March 03, 2008

In Re:

LEGEND:

Distributing1 =

Distributing2 =

Corp1 =

LLC =

Partnership =

Controlled =

Shareholder =

A
Shareholder =
B
Shareholder =
C
Business A =

Business B =

Year1 =

Year2 =

Date1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

State X =

Lender =

Dear _____ :

This letter responds to a request for rulings dated April 24, 2007, regarding certain federal income tax consequences of a series of proposed transactions. Additional information was received in correspondence dated in August 10, September 07, November 06, December 18, 2007, and February 28, 2008. The information submitted for consideration is summarized below. Unless otherwise indicated, references herein to code sections and regulation sections are to the applicable Internal Revenue Code and Income Tax Regulations.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. The information, representations, and other data are subject to verification on examination.

In particular, this office has neither reviewed nor made a determination regarding whether the distributions described below satisfy the business purpose requirement of § 1.355-2(b), whether the distributions are used principally as a device for the distribution of the earnings and profits of any distributing or controlled corporation (see § 355(a)(1)(B) and § 1.355-2(d)), or whether the distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing or controlled corporation (see § 355(e) and § 1.355-7).

In addition, this office has not verified the partners' basis in their partnership interests. Controlled's bases in the assets received from Distributing1 are governed by § 358, but depend on appropriate adjustments under subchapter K. Information was neither requested nor submitted to examine and verify basis allocations under subchapter K.

Distributing2 is a privately-held, State X corporation with voting and non-voting stock issued and outstanding. Related, family shareholders and their two trusts own over ninety-nine percent of the voting stock and over ninety-seven percent of the non-voting stock of Distributing2. Shareholder A owns a percent of the voting common and b percent of the non-voting common stock. Shareholder B owns c percent of the voting common and d percent of the non-voting common stock. Shareholder C owns e percent of the voting common and f percent of the non-voting common stock. Together, the two trusts own g percent of the voting common stock and h percent of the non-voting common stock. Distributing2's board of directors (the Directors) collectively own less than one percent of Distributing2's voting stock, and three individuals, in the aggregate, own the remaining, i percent of Distributing2's non-voting stock. For family planning purposes, prior to the proposed transactions, one of the trusts will exchange in

a taxable transaction its voting stock with a family member and its non-voting stock with a trust newly created by Shareholder A.

Distributing2 is the common parent of an affiliated group of corporations filing a consolidated federal income tax return on the calendar year. Distributing2 has numerous corporate and non-corporate, direct and indirect subsidiaries or entities, to which only Corp1, LLC, Distributing1, and Partnership will be referred. Distributing2 owns ninety-seven percent of Corp1, and wholly-owns Distributing1. Distributing1 owns a ninety-nine percent limited partnership interest in Partnership, a U.S. limited partnership. Corp1 wholly-owns LLC, which is a business entity (as defined in § 301.7701-2(a) of the Procedure and Administration Regulations) that is disregarded as an entity separate from its owner for federal income tax purposes. LLC owns a one percent general partnership interest in Partnership that is treated as owned by Corp1 for federal income tax purposes. Distributing1, Distributing2, and Partnership use and Controlled (to be formed by Distributing1) will use the accrual method of accounting.

Distributing2, through its subsidiaries, operates Business A and Business B. Corp1 and Distributing2 conduct the core operations of Business A. They have directly conducted Business A for more than five years. From Year1 to Year2, Distributing1 and Corp1 directly operated Business B. In Year2, Distributing1 and Corp1 formed Partnership with the Business B assets and cash sufficient to expand the business through acquisitions. On Date 1, Partnership used the cash to acquire additional assets that increased Business B's volume by more than ninety percent.

Distributing2 has supplied financial information indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Distributing2 proposes separating Business A from Business B to improve Business A's liquidity ratios and allow each business to expand through external acquisitions. After separating the businesses, Distributing1, Distributing2, and Controlled will continue certain business relationships (Continuing Relationships) including the sharing of employees, computer and accounting functions, the continuance of the currently existing Benefits Plan for Controlled's employees, and Controlled's receipt of services from Distributing1 with respect to Business B. Controlled will pay arm's length consideration with respect to all Continuing Relationships.

The Proposed Transactions

- (i) Distributing1 will form a new wholly-owned domestic corporation, Controlled.
- (ii) Controlled will borrow up to \$j.
- (iii) Partnership will distribute \$k to Distributing1.
- (iv) Corp1's LLC will transfer its general partnership interest in Partnership to Controlled in exchange for approximately \$l (the Exchange).

Simultaneously, Distributing1 will contribute its limited partnership interest in Partnership to Controlled (the Contribution) in exchange for Controlled stock and \$j. Partnership will terminate under applicable state law and cease to exist.

- (v) Within twelve months of its receipt, Distributing1 will use the \$j to repay debt (the Debt) owed to unrelated Lender.
- (vi) Distributing1 will distribute all of the Controlled stock to its shareholder, Distributing2 (the First Distribution).
- (vii) Distributing2 will distribute all the stock of Controlled pro-rata to its shareholders, except the Directors who will receive cash in lieu of Controlled stock (the Second Distribution).

Representations

The taxpayer makes the following representations in connection with the Proposed Transactions:

- (a) LLC's transfer of its partnership interest in Partnership to Controlled in exchange for cash will be a value-for-value exchange.

First Distribution

- (b) The indebtedness owed by Controlled to Distributing1 after the First Distribution, if any, will not constitute stock or securities.
- (c) No part of the Controlled stock to be distributed by Distributing1 to Distributing2 is being received by Distributing2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing1.
- (d) The five years of financial information submitted on behalf of Distributing1's Business A is representative of the corporation's present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B is representative of the business' present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Except for the Continuing Relationships, Distributing1 and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(g) The First Distribution will be carried out to facilitate the Second Distribution. The distribution of the stock of Controlled in the distribution is motivated, in whole or substantial part, by this corporate business purpose.

(h) The First Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing1 or Controlled, or both.

(i) The total fair market value of the assets that Controlled will receive will exceed the sum of: (a) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled from Distributing1 in the Contribution, (b) the amount of any liabilities owed to Controlled by Distributing1 (if any) that are discharged or extinguished in connection with the Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing1 from Controlled (if any) in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(j) The sum of the Debt to be paid with cash received from Controlled will not exceed the weighted quarterly average of the Distributing1 debt owed to unrelated third parties for the twelve-month period ending upon the close of business on the last full business day before the date on which Distributing2's Board of Directors authorized Distributing2 to pursue actively the distribution of Business B.

(k) For the period of time from the date of the First Distribution of Controlled until twelve months following Distributing1's repayment of the Debt owed to Lender, no member of Distributing2's affiliated group (as defined by § 1504(a), except that § 1504(b) shall not apply) will borrow from Lender.

(l) The liabilities assumed (as determined under section 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being received by Controlled.

(m) Distributing1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(n) Except as may arise under the Continuing Relationships, no intercorporate debt will exist between Distributing1 and Controlled at the time of, or subsequent to, the First Distribution.

(o) Immediately before the First Distribution, items of income, gain, loss, deduction, and credit, if any, will be taken into account as required by the applicable intercompany transaction regulations. There is no excess loss account with respect to Controlled stock.

- (p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (q) Payments made in connection with all Continuing Relationships or other transactions between Distributing1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (r) The First Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the First Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing1 that will constitute a 50-percent or greater interest (defined in § 355(d)(4)) in Distributing1, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50-percent or greater interest (defined in § 355(d)(4)) in Controlled.
- (s) The First Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing1 or Controlled.
- (t) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Second Distribution

- (u) Distributing2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (v) The indebtedness owed by Controlled to Distributing2 after the Second Distribution, if any, will not constitute stock or securities.
- (w) No part of Controlled stock to be distributed by Distributing2 to its shareholders is being received by its shareholders as creditors, employees, or in any capacity other than that of shareholders.
- (x) Immediately after the Second Distribution, Distributing2 will own at least 80 percent of the vote and value of the stock of Distributing1, which is engaged in Business A as defined in § 355(b)(2).
- (y) Except for the Continuing Relationships, following the Second Distribution, Distributing2 and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(z) The Second Distribution will be carried out for the following corporate business purposes: to relieve certain regulatory burdens, to improve the overall risk profile of the group, and to allow Distributing2 and Controlled each to expand their respective business through external acquisitions. The distribution of the stock of Controlled is motivated, in whole or substantial part, by these corporate business purposes.

(aa) The Second Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing2 or Controlled, or both.

(bb) Except as may arise under the Continuing Relationships, no intercorporate debt will exist between Distributing2 and Controlled at the time of, or subsequent to, the distribution of Controlled.

(cc) Immediately before the Second Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. There is no excess loss account with respect to the Controlled stock.

(dd) Payments made in connection with all Continuing Relationships or other transactions, if any, between Distributing2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ee) The Second Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the Second Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing2 that will constitute a 50-percent or greater interest (defined in § 355(d)(4)) in Distributing2, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50-percent or greater interest (defined in § 355(d)(4)) in Controlled.

(ff) The Second Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing2 or Controlled.

(gg) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

Based solely on the information submitted, we rule as follows with respect to the Proposed Transactions:

First Distribution

1. The Contribution followed by the First Distribution will qualify as a reorganization under § 368(a)(1)(D). Distributing1 and Controlled each will be “a party to a reorganization” (§ 368(b)).
2. No gain or loss will be recognized by Distributing1 in the Contribution (§§ 361(a), 361(b)(1)(A), and 361(b)(3)). This ruling relies on Distributing1’s payment to Lender and representation (k).
3. No gain or loss will be recognized by Controlled on the receipt of the assets from Distributing1 in the Contribution in exchange for its stock (§ 1032(a)).
4. No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing1 shareholder that receives the Controlled stock pursuant to the First Distribution (§ 355(a)).
5. The aggregate basis of the Distributing1 and Controlled stock in the hands of the Distributing1 shareholder immediately after the First Distribution will be the same as the basis of the Distributing1 stock held by the Distributing1 shareholder immediately before the First Distribution. The total basis will be allocated between the shares of the Distributing1 stock and the Controlled stock in proportion to the relative fair market values of each (§ 1.358-2(a)(2) and § 358(b)).
6. The basis for the ninety-nine percent undivided interest in the assets of Partnership received by Controlled attributable to the Contribution of Distributing1’s Partnership interest will equal the basis of Distributing1 in its Partnership interest allocated in accordance with § 732(c) (Rev. Rul. 84-111 Situation 3, 1984-2 C.B. 88 and § 362(b)).
7. The holding period for the ninety-nine percent undivided interest in the assets of Partnership received by Controlled attributable to the Contribution of Distributing1’s Partnership interest will include the period during which Partnership held the assets (Rev. Rul. 84-111 Situation 3, 1984-2 C.B. 88 and § 1223(2)).
8. No gain or loss will be recognized by Distributing1 on the First Distribution (§ 361(c)(1) and (3)).
9. The basis for the one percent undivided interest in the assets of Partnership received by Controlled attributable to the Exchange of Corp1’s Partnership interest will be determined as if Controlled acquired those assets by purchase (Rev. Rul. 99-6 Situation 2, 1999-1 C.B. 432 and § 1012).

10. The holding period for the one percent undivided interest in the assets of Partnership received by Controlled attributable to the Exchange of Corp1's Partnership interest begins on the day immediately following the date of the Exchange (Rev. Rul. 99-6 Situation 2, 1999-1 C.B. 432).

11. Gain or loss will be recognized by Corp1 on the Exchange in accordance with § 741.

Second Distribution

12. No gain or loss will be recognized by Distributing2 on the distribution of all of the Controlled stock to the Distributing2 shareholders pursuant to the Second Distribution (§ 355(c)).

13. No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing2 shareholders who receive the Controlled stock pursuant to the Second Distribution (§ 355(a) and Rev. Rul. 62-138, 1962-2 C.B. 95).

14. The aggregate basis, immediately after the Second Distribution, of the Distributing2 and Controlled stock in the hands of the Distributing2 shareholders that receive Controlled stock will be the same as the basis of the Distributing2 stock held by those shareholders immediately before the Second Distribution. The total basis will be allocated between the shares of the Distributing2 stock and the Controlled stock in proportion to the relative fair market values of each (§ 1.358-2(a)(2) and § 358(b)).

15. The holding period of the Controlled stock received by the Distributing2 shareholders will include the holding period of the Distributing2 stock with respect to which the Second Distribution is made, provided that the Distributing2 stock is held as a capital asset on the date of the Second Distribution (§ 1223(1)).

16. Proper allocation of earnings and profits between Distributing2 and Controlled will be made under § 1.312-10(b) and § 1.1502-33.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed about the federal tax treatment of the Proposed Transactions under other provisions of the Code or Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above ruling. In addition, no opinion is expressed about the federal tax treatment of the trust's exchange of non-voting stock with a trust newly created by Shareholder A and the exchange of voting stock with a family member.

This ruling letter is directed only to the taxpayer who requested it. Section

6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Proposed Transactions are completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Marlene P. Oppenheim
Marlene P. Oppenheim
Senior Counsel
Office of Associate Chief Counsel (Corporate)

cc: